IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRANCE PARENTE,	:	**CIVIL ACTION**
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
BELL ATLANTIC – PENNSYLVANIA and AETNA U.S. HEALTHCARE, INC.,	:	
	:	
Defendants.	:	**NO. 99-5478**

M E M O R A N D U M

Reed, S.J. **April 17, 2000**

Plaintiff France Parente, an employee of defendant Bell Atlantic – Pennsylvania ("Bell Atlantic"), applied for long-term disability benefits through Bell Atlantic's benefit plan, which was administered by defendant Aetna.[1] Plaintiff's application was rejected on September 21, 1998. After making a timely request for a review of the decision, plaintiff received a final determination on June 17, 1999. She then brought this action under the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq*. ("ERISA").

Defendant Aetna moves to dismiss plaintiff's complaint for failure to state a claim under Rule 12 (b) (6) of the Federal Rules of Civil Procedure (Document No. 4).[2] In deciding a motion to dismiss under Rule 12 (b) (6), a court must accept all well-pleaded facts in the complaint as true and construe them in the light most favorable to the plaintiff. See Jenkins v. McKeithen, 395 U.S. 411, 422, 89 S. Ct. 1843, 1849 (1969). Because the Federal Rules of Civil Procedure

[1] Apparently, the proper defendant in this case is Aetna Life Insurance Company, and the reference in plaintiff's pleadings and the docket to Aetna U.S. Healthcare, Inc., is erroneous. To avoid confusion, I will refer to this defendant as simply "Aetna."

[2] Defendant Bell Atlantic has filed no motions in this case.

require only notice pleading, the complaint need only contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8 (a). A motion to dismiss should be granted if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U.S. 69, 73, 104 S. Ct. 2229, 2232 (1984). "In considering a Rule 12 (b) (6) motion, we do not inquire whether the plaintiff[] will ultimately prevail, only whether [she is] entitled to offer evidence to support [her] claims." Children's Seashore House v. Waldman, 197 F.3d 654, 658 (3d Cir. 1999) (quoting Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996) (citations omitted)).

Plaintiff's complaint does not specify the particular sections of ERISA under which plaintiff seeks recovery. However, it is apparent from the nature of the allegations and the relief requested that plaintiff seeks a recovery of benefits under 29 U.S.C. § 1132 (a) (1) (B), and equitable relief for breach of fiduciary duties under 29 U.S.C. § 1132 (a) (3).[3]

1. Exhaustion of Administrative Remedies

Aetna first argues that the entire complaint should be dismissed because plaintiff has failed to plead that she exhausted her administrative remedies. Aetna does not suggest that plaintiff in fact failed to exhaust her remedies, nor does Aetna contend that plaintiff's complaint fails to set forth sufficient facts to show that she exhausted her claim. Rather, Aetna's argument is that plaintiff did not include in her complaint the words "I exhausted my administrative remedies before filing this lawsuit" or other words to that effect. Thankfully, however, the

[3] As Aetna correctly points out, plaintiff may not proceed under 29 U.S.C. § 1132 (a) (2) because an individual plaintiff may not recover benefits due to her under § 1132 (a) (2). See Bixler v. Central Pa. Teamsters Health & Welfare Fund, 12 F.3d 1292, 1296 (3d Cir. 1993) (under § 1132 (a) (2), an individual plaintiff may sue, however the recovery runs to the benefit of the plan, not the individual plaintiff).

matter before us is governed by liberal pleading rules, not the laws of wizardry, and therefore there are no "magic words" that must be included in a complaint to satisfy the exhaustion requirement.[4] So long as plaintiff's complaint, viewed in the light most favorable to her, pleads facts sufficient to show that she exhausted her administrative remedies, the complaint will survive Aetna's motion to dismiss for failure to state a claim. See Shannon v. City of Philadelphia, No. 98-5277, 1999 U.S. Dist. LEXIS 2428, *6, n.3 (E.D. Pa. Mar. 5, 1999).[5]

On the face of her complaint, plaintiff avers that she pursued every procedural avenue of which she was informed, including applying for benefits, seeking review of the denial of her benefits, and receiving a final determination, before commencing this action.[6] I therefore conclude that plaintiff has pled sufficient facts to satisfy the exhaustion requirement.

2. Appropriate Equitable Relief

Aetna's next attack on plaintiff's complaint is limited to the second count. Aetna argues that plaintiff may not seek equitable relief under § 1132 (a) (3) because she has an adequate remedy in her claim for recovery of benefits under § 1132 (a) (1) (B). I am suspicious of

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[4] Cf., Western States Ins. Co. v. Wisconsin Wholesale Tire, Inc., 184 F.3d 699, 701-02 (7th Cir. 1999) ("A complaint need not use magic words, but it must sketch a claim that is within the scope of the policy."); Alexander v. City of Chicago, 994 F.2d 333, 340 (7th Cir. 1993) (holding that there is no need to plead magic words in notice pleadings); Cabrera v. Martin, 973 F.2d 735, 745 (9th Cir. 1992) ("We therefore find no reason to reverse the district court on the grounds that the appellees ... failed to use the magic words 'under color of state law' when bringing their complaint ... .").

[5] Furthermore, even if there were "magic words" that plaintiff failed to include in the complaint, the Court would likely allow plaintiff to amend the complaint to include those words, unless to do so would be futile.

[6] Plaintiff avers that her claim was denied on September 21, 1998. Complaint, at ¶ 36. The denial specified the administrative procedure for plaintiff to follow: if plaintiff desired a review of the denial, she could submit a written request with particular information within 60 days, and would receive a "final determination" within 60 days of the receipt of her request. Plaintiff complied with this procedure by submitting a written request for a review of the denial within four days of receiving the denial. Complaint, at ¶ 37. She received her "final determination" on June 17, 1999, in which Aetna upheld its initial denial of benefits. The facts pled indicate that plaintiff pursued all her administrative remedies prior to filing this action.

Aetna's argument that claims for recovery of benefits under § 1132 (a) (1) (B) and equitable relief under § 1132 (a) (3) are mutually exclusive.[7] Though neither the Supreme Court nor the Court of Appeals for the Third Circuit has so held, other district courts in the Third Circuit have concluded that a plaintiff's claims under § 1132 (a) (3) must be dismissed whenever plaintiff also asserts a claim for relief under § 1132 (a) (1) (B).[8] I disagree.

Section 1132 (a) (3) provides that an action may be brought "by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief." Because plaintiff in this case does not seek to enjoin any of defendants' practices, the issue is whether she seeks "appropriate equitable relief." Nothing in the language of § 1132 (a) (3) provides that a plaintiff may not bring a claim under both § 1132 (a) (1) (B) and (a) (3).

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[7] Section 1132 provides

> (a) Persons empowered to bring a civil action
> A civil action may be brought --
> (1) by a participant or beneficiary --
> (A) for the relief provided for in subsection (c) of this section, or
> (B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;
> (2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;
> (3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan. . . .

[8] See, e.g., Smith v. Thomas Jefferson Univ., 52 F. Supp. 2d 495, 489, n.4 (E.D. Pa. 1999) (observing that if plaintiff were to proceed under § 1132 (a) (1) (B), plaintiff's claim under § 1132 (a) (3) would have to be dismissed); Reilly v. Keystone Health Plan East, Inc., No. 98-1648, 1998 U.S. Dist. LEXIS 11337, at *4 (E.D. Pa. July 27, 1998)(dismissing claim under subsection § 1132 (a) (3) because plaintiffs also sought remedy under subsection § 1132 (a) (1) (B)); Feret v. CoreStates Fin. Corp., No. 97-6759, 1998 U.S. Dist. LEXIS 11512, at *16 (E.D. Pa. July 27, 1998) (same); Smith v. Prudential Health Care Plan, Inc., No. 97-891, 1997 U.S. Dist. LEXIS 18991, at *2 (E.D. Pa. Nov. 25, 1997) (same); Kuestner v. Health & Welfare Fund & Pension Fund of the Phila. Bakery Employers & Food Driver Salesman's Union Local No. 463, 972 F. Supp. 905, 910-11 (E.D. Pa. 1997) (same).

The Supreme Court obliquely addressed the meaning of "appropriate equitable relief" in Varity v. Howe, 516 U.S. 489, 116 S. Ct. 1065 (1996). There, the Court contemplated the practice of plaintiffs asserting overlapping claims for recovery of benefits and breach of fiduciary duty, and observed that in such circumstances,

> We should expect that courts, in fashioning 'appropriate' equitable relief will keep in mind the 'special nature and purpose of employee benefit plans,' and will respect the 'policy choices reflected in the inclusion of certain remedies and the exclusion of others.' Thus, we should expect that where Congress elsewhere provided adequate relief for a beneficiary's injury, there will likely be no need for further equitable relief, in which case such relief would not normally be 'appropriate.'

Varity, 516 U.S. at 515, 116 S. Ct. at 1079 (quoting Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 54, 107 S. Ct. 1549, 1556 (1987) and citing Mertens v. Hewitt Associates, 508 U.S. 248, 113 S. Ct. 2063 (1993); Massachusetts Mut. Life Ins. Co. v. Russell, 473 U.S. 134, 105 S. Ct. 3085 (1985)) (internal citations omitted).[9] Aetna and other courts reduce this language to the facile maxim that claims for recovery of benefits under § 1132 (a) (1) (B) and for equitable relief under § 1132 (a) (3) are always mutually exclusive. This is an inference I cannot draw.

The language used by the Supreme Court in Varity does not mandate the dismissal of § 1132 (a) (3) claims whenever a § 1132 (a) (1) (B) claim also is brought. The Supreme Court's statement that "there will *likely* be no need for further equitable relief," Varity, 516 U.S. at 515, 116 S. Ct. at 1079 [emphasis added], indicates that the Court was not drawing a bright-line rule

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[9] It should be noted at the outset that the Supreme Court's observations in Varity concerning the meaning of "appropriate equitable relief" were made in dictum, and were not at all essential to the holding of the case. The issue in Varity was whether plaintiffs could seek equitable relief for breaches of fiduciary duty under § 1132 (a) (3). The court concluded that because the plaintiffs in Varity were no longer members of the plan and therefore could not bring suit under § 1132 (a) (1) (B), no other remedy provided plaintiffs adequate relief, and equitable relief under § 1132 (a) (3) was therefore appropriate. The majority's "appropriate equitable relief" analysis was not necessary to its holding, and thus it is questionable whether the analysis is binding.

Furthermore, in Varity the Supreme Court did not face the situation presented in this case, in which plaintiff presents valid claims under both § 1132 (a) (1) (B) and (a) (3). Rather, in Varity, the plaintiffs' claims under § 1132 (a) (1) (B) were not viable, and the Court addressed only plaintiffs' claims under § 1132 (a) (3).

that a claim for equitable relief under § 1132 (a) (3) should be dismissed when a plaintiff also brings claim under § 1132 (a) (1) (B). To the contrary, at the very least, the language means that in some cases, the relief provided by another section of ERISA, such as § 1132 (a) (1) (B), will be inadequate, and additional equitable relief under § 1132 (a) (3) will be necessary.[10]

Instead of a bright-line rule, Varity requires an inquiry into whether "Congress provided adequate relief for a beneficiary's injury." Varity, 516 U.S. at 515, 116 S. Ct. at 1079.[11] I do not believe that this inquiry is limited, as defendant and some courts suggest, to whether plaintiff merely has a viable claim under § 1132 (a) (1) (B) (or another ERISA remedial section) that *could* lead to relief. Rather, Varity requires a determination of whether the relief provided by an alternative ERISA section *in fact* "provide[s] adequate relief for a beneficiary's injury." Id. Put differently, under Varity, a plaintiff is only precluded from seeking equitable relief under § 1132 (a) (3) when a court determines that plaintiff *will certainly receive* or *actually receives* adequate relief for her injuries under § 1132 (a) (1) (B) or some other ERISA section.[12]

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[10] Furthermore, the Supreme Court's observation that courts should respect the special nature of benefit plans and the policy choices involved in ERISA's remedy structure, see Varity, 516 U.S. at 515, 115 S. Ct. at 1079, also belies Aetna's suggestion of a bright-line rule prohibiting §1132 (a) (3) in all cases involving a claim under § 1132 (a) (1) (B); the language suggests that Courts are to engage in a careful, case-by-case assessment of the appropriateness of equitable relief.

[11] The Supreme Court's use of the term "relief" is also illuminating. The term "is used as a general designation of the assistance, redress, or benefit which a complainant seeks at the hands of a court, particularly in equity." Black's Law Dictionary, at 1291-92 (6th ed. 1990). Thus, the issue according to Varity is whether the another section of ERISA guarantees plaintiff the assistance, redress or benefit she seeks. The issue is not whether plaintiff has adequate "opportunity" or "recourse" or is afforded sufficient "due process" under another section; the Court could have used such language if it intended to merely guarantee plaintiffs their day in court under another section of ERISA. Varity requires that a court find that a plaintiff is assured adequate relief or recovery under another section before concluding that § 1132 (a) (3) does not apply. That is a determination I cannot make at this stage of the case.

[12] The Court of Appeals for the Third Circuit has never squarely addressed the issue before me today. The cases in which the court of appeals has addressed Varity been procedurally similar to Varity in that plaintiffs either did not assert claims under § 1132 (a) (1) (B) or such a claim was deemed insufficient. See Jordan v. Federal Express Corporation, 116 F.3d 1005, 1011(3d Cir. 1997) (plaintiff had no cause of action for failure to inform under § 1132

Such a determination cannot be made on a motion to dismiss involving viable claims under both § 1132(a) (1) (B) and (a) (4), because it is not clear at this stage whether § 1132 (a) (B) (1) will *in fact* provide the plaintiff adequate relief. Only when the judicial process establishes extent of the relief provided to plaintiff by § 1132 (a) (1) (B) may the Court proceed to the question of whether (and what kind of) equitable relief under § 1132 (a) (3) is appropriate. Therefore, a determination of whether § 1132 (a) (1) (B) provides plaintiff with adequate relief is premature at this early stage of the proceedings.

Thus, I reject the contention of Aetna, and respectfully disagree with other courts in this circuit, insofar as they contend that Varity requires at the pleading stage the dismissal of a claim under § 1132 (a) (3) in every case in which a plaintiff also brings a claim under § 1132 (a) (1) (B). As the foregoing analysis demonstrates, such an interpretation of Varity is overly restrictive and may result in an unjust and premature denial of a claim.

Even if I were to accept the proposition that claims under § 1132 (a) (1) (B) and (a) (3) are mutually exclusive, there is another, equally compelling reason why a plaintiff should be allowed to assert claims under both § 1132 (a) (1) (B) and (a) (3): the longstanding principle of

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(a) (1) (B), and could only seek relief under § 1132 (a) (3)); Ream v. Frey, 107 F.3d 147, 152 (3d Cir. 1997) (plaintiff asserted only breaches of fiduciary duty, and therefore sought relief only under § 1132 (a) (3)); In re Unysis Corp. Retiree Medical Benefit "ERISA" Litig., 57 F.3d 1255, 1262 (3d Cir. 1995), cert. denied, 517 U.S. 1103, 116 S. Ct. 1316 (1996) (court considered only whether plaintiff could bring a claim for breach of fiduciary duty under § 1132 (a) (3)); Bixler v. Central Pa. Teamsters Health & Welfare Fund, 12 F.3d 1292, 1296-97 (3d Cir. 1993) (district court had properly dismissed plaintiffs claim under § 1132 (a) (1) (B) because plaintiff had failed to comply with the terms of the plan, and thus only plaintiffs' claim under §1132 (a) (3) remained).

None of these cases held that a plaintiff may not assert claims under both § 1132 (a) (1) (B) and (a) (3). The two cases decided after Varity (Jordan and Ream) merely repeated the holding of Varity that plaintiffs may assert claims for breaches of fiduciary duties under § 1132 (a) (3) and did not engage in an analysis of Varity's "appropriate equitable relief" language.

Thus, the I address an issue on which there is no binding precedent in this circuit.

allowing parties to plead in the alternative. Rule 8 (e) (2) of the Federal Rules of Civil Procedure specifically contemplates pleading in the alternative: "A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses ... . A party may also state as many separate claims or defenses as the party has regardless of consistency . ... ." See Langer v. Monarch Life Ins. Co., 966 F.2d 786, 802 (3d Cir. 1992). The modern liberal pleading rules allowing parties to plead in the alternative were enacted to afford parties greater flexibility in their pleadings and to spare parties from "sacrific[ing] [valid claims] on the altar of consistency." See Charles A. Wright & Arthur Miller, Federal Practice and Procedure § 1282 at 533 (2d ed. 1990).[13] Therefore, placing plaintiffs in the predicament of choosing between two valid ERISA claims before they have had the benefit of discovery, and thereby forcing plaintiffs to drop claims that could lead to relief, is not only antithetical to the spirit of liberal pleading rules, it is patently unjust.

For the foregoing reasons, I respectfully disagree with the courts that have held that a plaintiff cannot plead in the alternative claims for both recovery of benefits under § 1132 (a) (1) (B) and equitable relief under § 1132 (a) (3).[14] I believe the better course is to allow plaintiff to proceed under both § 1132 (a) (1) (B) and (a) (3), and to leave final consideration of the

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[13] According to Professors Wright and Miller,

> Common law and code practice condemned inconsistency in pleadings because it was believed that a pleading containing inconsistent allegations indicated falsehood on its face and was a sign of a chicanerous litigant seeking to subvert the judicial process. All too frequently, however, valid claims were sacrificed on the altar of technical consistency. In order to avoid the constrictions of the early practice, the draftsmen of the federal rules sought to liberate pleaders from the inhibiting requirement of technical consistency.

Charles A. Wright & Arthur Miller, 5 Federal Practice and Procedure § 1282, at 533 (2d ed. 1990).

[14] See supra, note 8.

appropriateness of the equitable relief requested by plaintiff under § 1132 (a) (3) until it can be determined whether § 1132 (a) (1) (B) in fact provides plaintiff appropriate relief from her injuries.

Therefore, Aetna's motion to dismiss plaintiff's claim on the ground that a plaintiff may not assert claims under both § 1132 (a) (1) (B) and (a) (3) will be denied.

3. *Breaches of Fiduciary Duties*

Aetna's last line of defense in its motion to dismiss, advanced in its reply brief, is that plaintiff's complaint fails to aver any breaches of fiduciary duties by Aetna.[15] The second count, according to Aetna, refers only to actions that could have been taken by Bell Atlantic, and does not specify duties that were breached by Aetna.[16]

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[15] I do not address the parties' arguments concerning defendant Bell Atlantic and the Bell Atlantic release form signed by plaintiff. Bell Atlantic has not filed a motion to dismiss in this case, and therefore Bell Atlantic's liability is not at issue today.

[16] The complaint reads:

51. Defendants breached their fiduciary duties to plaintiff as follows:

(a) By threatening to withdraw benefits and forcing Plaintiff to return to work in July 1996 when Defendants knew or should have known that Plaintiff was disabled;
(b) By threatening to withdraw benefits and forcing Plaintiff to return to work in July 1996 when Defendants' expert, Dr. Mandel, recommended additional testing;
(c) By threatening to withdraw benefits and forcing Plaintiff to return to work in July 1996 when Defendants' expert, Dr. Mandel, determined that plaintiff was not disabled from all employment but did not state if Plaintiff was disabled from her own employment;
(d) By withdrawing benefit payments in July, 1998 without a formal denial of Plaintiff's claim for long term disability benefits;
(e) By withdrawing benefits in July, 1998 prior to requesting that Plaintiff submit to a medical exam;
(f) By withdrawing benefit payments in July, 1998 contrary to the orders of Plaintiff's treating physicians;
(g) By using the medical examination of Dr. Nelson to justify its decision after the fact to withhold payment in July, 1998;
(h) By denying Plaintiff's claim when Defendants' own expert, Dr. Bonner, suggested further diagnostic testing;

Some of the duties alleged to have been breached by plaintiff relate unmistakably to the withdrawal of short-term benefits, Complaint, at § 51 (a) - (f)); these allegations reference the withdrawal of benefits payments, and in this case, only short-term benefits were paid out and, thus, could have been withdrawn.[17] The complaint alleges that Aetna was the administrator only of Bell Atlantic's long-term disability benefits plan, Complaint, at ¶ 8, and plaintiff does not aver that Aetna was involved in the administration of Bell Atlantic's short-term disability benefits plan. The fiduciary breaches alleged in ¶ 51 (a) - (g) thus relate only to short-term benefits and are not relevant to Aetna, the long-term benefits administrator. Therefore, these alleged breaches of fiduciary duties will be dismissed as to Aetna.

Construed in the light most favorable to plaintiff, however, some of the alleged fiduciary breaches relate at least partially to the payment (or nonpayment) of long-term benefits or the provision information related to the benefits determination. Complaint, at ¶ ¶ 51 (h), (i) and 52. According to the complaint, Aetna was the administrator of the plan, Complaint, at ¶ 8, and therefore was responsible for the payment or non-payment of those benefits and for keeping plaintiff informed. While the alleged breaches may also relate to the conduct of Bell Atlantic, plaintiff's employer, Bell Atlantic did not control the flow of benefits to plaintiff; that duty was delegated to Aetna, and because each breach alleges the withholding of benefits or some other

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(i) By relying on the functional evaluation to deny benefits when the report stated on its face that the results were inconclusive.

52. As set forth in the preceding paragraph, Defendants failed to establish an adequate plan and procedure by which disability claims were processed and evaluated causing a delay of eleven months between the time that Plaintiff's short term benefits ran out and the time that Defendants made a final denial of Plaintiff's claim for long term disability benefits in further breach of their fiduciary duties to Plaintiff.

[17] See supra, note 16.

benefits-related act or omission, Aetna is implicated. As such, ¶ ¶ 51 (h), (i) and 52 implicate Aetna in their allegations of breaches of fiduciary duties. The denials of plaintiff's claims and benefits alleged in ¶ 51 (h), (i) could involve either short-term and long-term benefits or both, and the delay alleged in ¶ 52 unmistakably relates to long-term benefits. See supra, note 16.

Thus, it is not "clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon, 467 U.S. at 73, 104 S. Ct. at 2232. To the contrary, I can conceive of a set of facts consistent with the allegations in the complaint under which it could be proved that Aetna committed some of the alleged breaches. Therefore, Aetna's motion to dismiss Count II on the ground that the complaint fails to allege that Aetna breached its fiduciary duties under ERISA will be denied as to ¶ ¶ 51 (h), (i) and 52.

In conclusion, Aetna's motion will be granted as to the allegations contained in Count II, ¶ 51 (a) - (g), but denied as to all Count I and the allegations detailed in Count II, ¶ ¶ 51 (h), (i), and 52. An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRANCE PARENTE,	:	**CIVIL ACTION**
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Plaintiff,	:	
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v.	:	
	:	
BELL ATLANTIC – PENNSYLVANIA and AETNA U.S. HEALTHCARE, INC.,	:	
	:	
Defendants.	:	**NO. 99-5478**

O R D E R

AND NOW, this 17th day of April, 2000, upon consideration of the motion of defendant Aetna to dismiss this action for failure to state a claim pursuant to Rule 12 (b) (6) of the Federal Rules of Civil Procedure (Document No. 4), the memoranda, the response, the replies, and the complaint, and having concluded, for the reasons set forth in the foregoing memorandum, that plaintiff has stated claims upon which relief may be granted, it is **HEREBY ORDERED** that the motion of defendant Aetna is **GRANTED** as to the allegations contained in Count II, ¶ 51 (a) - (g), and **DENIED** as to Count I and the alleged breaches of fiduciary duties in Count II, ¶¶ 51 (h) - (i) and 52.

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LOWELL A. REED, JR., S.J.